

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
—BROWNSVILLE DIVISION—**

United States District Court
Southern District of Texas
ENTERED

SEP 29 2009

JORGE GONZALEZ, et al.,
Plaintiffs,

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Clerk of Court

V.

CIVIL NO. B-06-105

UNITED STATES DEPARTMENT OF
COMMERCE,
Defendants.

MEMORANDUM OPINION AND ORDER

On September 11, 2009, the Plaintiffs filed a Motion for Leave to Amend their Second Amended Original Complaint. (Doc. No. 34.) On September 24, 2009, the Defendant filed a Response in Opposition to the Plaintiffs' Motion for Leave to Amend. (Doc. No. 36.) Along with the Response, Defendant also filed a Motion to Stay the Summary Judgment Briefing Schedule (Doc. No. 37) and a Motion to Expedite Response to the Motion to Stay (Doc. No. 38.).

Federal Rule of Civil Procedure 15(a) provides that amendments to a pleading may be made once as a matter of course, and after that, only by leave of court or with the consent of the opposing party. *See* Fed. R. Civ. P. 15(a). Under the rule, "[t]he court should freely give leave when justice so requires." *Id.* The standard for granting leave is generous, as "the policy of the federal rules is to permit liberal amendment to facilitate determination of claims on the merits and to prevent litigation from becoming a technical exercise in the fine points of pleading." *Dussoy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 598 (5th Cir. 1981). Unless there is a "substantial reason," such as "undue delay, bad faith or dilatory motive on the part of the movant,

repeated failure to cure deficiencies by amendments previously allowed, and undue prejudice to the opposing party,” the court should grant leave to amend. *Id.*

Plaintiffs have sought leave to amend their complaint to clarify the facts regarding which parties are current or former owners of particular shrimp trawlers, to clarify the standard under which they seek judicial review, and to clarify the claims for which they seek relief. (*See* Doc. No. 34; Doc. No. 34-2.) Some additional allegations have been made as well. (*E.g.*, Doc. No. 34-2 at 31, ¶ 5.3z (asserting that Constitutional rights with respect to claimed property interests have been violated); *id.* at 33, ¶ 9.0 (adding “excessive fines” to the Eighth Amendment claim).)

Defendant notes that the Third Amended Complaint continues to allege claims concerning Notices of Violations in matters SE001412ES/FM and SE030369FM, which were previously dismissed by this court’s order dated June 24, 2009. (Doc. No. 36 at 2-4.) Defendant thus argues that because Plaintiffs have not omitted these dismissed claims, amending their complaint would be futile and their motion should be denied. (*Id.* at 4.)

Given the liberal standard for granting leave to amend and in the absence of any reason to deny leave, the Court will allow the Plaintiffs to amend their Second Amended Original Complaint. The Court is mindful of the Defendant’s concern that the Plaintiffs’ Third Amended Complaint continues to allege claims previously dismissed by this Court’s June 24, 2009 order. To that end, the Court reminds all parties of its June 24, 2009 order and admonishes all parties that nothing in this order shall be construed to contradict this Court’s prior orders. The claims previously dismissed remain dismissed.

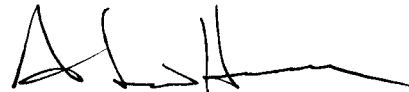
The court is also mindful that the Defendant may need additional time to respond to the Plaintiffs’ Third Amended Complaint and that any future amendments will further disrupt the

briefing schedule and may unduly delay this case. Therefore, the Court extends the briefing deadlines and admonishes the Plaintiffs that no future amendments will be allowed without good cause shown.

Accordingly, it is ORDERED as follows:

- 1) Plaintiffs' Motion for Leave to Amend Its Second Amended Original Complaint (Doc. No. 34), as shown in its attached proposed Third Amended Complaint (Doc. No. 34-2), is GRANTED.
- 2) The Scheduling Order dated November 5, 2008, is amended as follows: Defendant's Response to the Plaintiffs' Motion for Summary Judgment is due by October 23, 2009. Plaintiffs' Reply is due by November 13, 2009. Defendant's Reply is due by December 4, 2009.
- 3) Defendant's Motion to Stay Summary Judgment Briefing Schedule (Doc. No. 37) and Defendant's Motion to Shorten Time for Response to Motion for Enlargement of Time (Doc. No. 38) are DENIED AS MOOT.

SIGNED this 29th day of September, 2009.



Andrew S. Hanen
United States District Judge